

**IC 6-9-26****Chapter 26. Madison County Food and Beverage Tax****IC 6-9-26-1****Application of chapter**

Sec. 1. This chapter applies to a county having a population of more than one hundred thirty thousand (130,000) but less than one hundred forty-five thousand (145,000).

*As added by P.L. 74-1988, SEC.2. Amended by P.L. 12-1992, SEC.53; P.L. 170-2002, SEC.49.*

**IC 6-9-26-2****Definitions**

Sec. 2. The definitions in IC 6-9-12-1 and IC 36-1-2 apply throughout this chapter.

*As added by P.L. 74-1988, SEC.2.*

**IC 6-9-26-3****Rate of tax; ordinance**

Sec. 3. (a) The fiscal body of the county may adopt an ordinance no later than December 31, 1988, to impose an excise tax, known as the county food and beverage tax, on those transactions described in sections 6 and 7 of this chapter.

(b) The rate of the tax equals one percent (1%) of the gross retail income on the transaction. For the purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

*As added by P.L. 74-1988, SEC.2.*

**IC 6-9-26-4****Copy of ordinance**

Sec. 4. If a fiscal body adopts an ordinance under section 3 of this chapter, the clerk shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

*As added by P.L. 74-1988, SEC.2.*

**IC 6-9-26-5****Effective date and application of ordinance**

Sec. 5. If a fiscal body adopts an ordinance under section 3 of this chapter, the county food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance was adopted.

*As added by P.L. 74-1988, SEC.2.*

**IC 6-9-26-6****Application of tax**

Sec. 6. Except as provided in section 8 of this chapter, a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the county in which the tax is imposed; and
- (3) by a retail merchant for consideration.

*As added by P.L.74-1988, SEC.2.*

#### **IC 6-9-26-7**

##### **Food served off-premises, in heated state, or with eating utensils**

Sec. 7. Transactions described in section 6(1) of this chapter include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

*As added by P.L.74-1988, SEC.2. Amended by P.L.257-2003, SEC.39.*

#### **IC 6-9-26-8**

##### **Exemptions**

Sec. 8. The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

*As added by P.L.74-1988, SEC.2.*

#### **IC 6-9-26-9**

##### **Collection; returns**

Sec. 9. The tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the taxes may be made on separate returns or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

*As added by P.L.74-1988, SEC.2.*

#### **IC 6-9-26-10**

##### **Receipt of taxes**

Sec. 10. The amounts received from the taxes imposed under this chapter shall be paid monthly by the treasurer of state to the county

fiscal officer upon warrants issued by the auditor of state.  
*As added by P.L.74-1988, SEC.2.*

#### **IC 6-9-26-11**

##### **Economic development project fund; establishment; deposits**

Sec. 11. (a) If a tax is imposed under section 3 of this chapter, the county fiscal officer shall establish an economic development project fund.

(b) The county fiscal officer shall deposit in the fund all amounts received under this chapter.

(c) Any money earned from the investment of money in the fund becomes a part of the fund.

*As added by P.L.74-1988, SEC.2.*

#### **IC 6-9-26-12**

##### **Use of funds**

Sec. 12. (a) Except as provided in section 12.5 of this chapter, money in the county economic development project fund shall be used by the county solely to:

(1) finance, construct, improve, equip, operate, maintain, and promote first, a civic center, and then an economic development project, if there is money not needed for a civic center, approved under section 13 of this chapter; and

(2) retire bonds issued, loans obtained, or lease payments incurred under IC 36-1-10 (referred to in this chapter as "obligations") to finance, construct, improve, equip, operate, maintain, or promote first, a civic center, and then an economic development project approved under section 13 of this chapter.

(b) Obligations entered into for the purposes described in subsection (a) shall be retired by using money collected from a tax imposed under this chapter.

*As added by P.L.74-1988, SEC.2. Amended by P.L.51-1992, SEC.1.*

#### **IC 6-9-26-12.5**

##### **Transfer of funds; use**

Sec. 12.5. (a) This section applies if there are no outstanding obligations for which a pledge has been made under section 15(a) of this chapter concerning uses authorized under section 12 of this chapter.

(b) Money deposited in the county economic development project fund before March 1, 1992, shall be transferred to the following:

(1) Fifty percent (50%) of the money deposited shall be transferred to the fiscal officer of a city having a population of more than fifty-nine thousand seven hundred (59,700) but less than sixty-five thousand (65,000).

(2) Fifty percent (50%) of the money deposited shall be transferred to the county general fund. Money transferred under this subdivision shall be used for:

(A) economic development projects in locations other than a city described in subdivision (1); or

(B) the following purposes:

- (i) The financing, construction, or equipping of a secure detention facility under IC 31-31-8 or IC 31-6-9-5 (repealed).
- (ii) All reasonable and necessary architectural, engineering, legal, financing, accounting, advertising, and supervisory expenses related to the financing, construction, or equipping of a facility described in item (i).
- (iii) The retiring of any bonds issued, loans obtained, or lease payments incurred under IC 36-1-10 to finance, construct, or equip a facility described in item (i).

(c) Except as provided in subsection (d), money deposited in the county economic development project fund after February 29, 1992, shall be transferred to the following:

(1) Forty percent (40%) of the money deposited shall be transferred to the fiscal officer of a city described in subsection (b)(1).

(2) Forty percent (40%) of the money deposited shall be transferred to the county general fund. Money transferred under this subdivision shall be used for the following purposes:

(A) The financing, construction, or equipping of a secure detention facility under IC 31-31-8 or IC 31-6-9-5 (repealed).

(B) All reasonable and necessary architectural, engineering, legal, financing, accounting, advertising, and supervisory expenses related to the financing, construction, or equipping of a facility described in clause (A).

(C) The retiring of any bonds issued, loans obtained, or lease payments incurred under IC 36-1-10 to finance, construct, or equip a facility described in clause (A).

(3) Twenty percent (20%) of the money deposited shall be transferred to the county general fund. Money transferred under this subdivision shall be used for economic development projects in locations other than a city described in subsection (b)(1).

(d) After the retiring of any bonds issued, loans obtained, or lease payments incurred under IC 36-1-10 to finance, construct, or equip a secure detention facility under subsection (c)(2), money deposited in the county economic development project fund after February 29, 1992, shall be transferred to the following:

(1) Seventy percent (70%) of the money deposited shall be transferred to the fiscal officer of a city described in subsection (b)(1).

(2) Thirty percent (30%) of the money deposited shall be transferred to the county general fund. Money transferred under this subdivision shall be used for economic development projects in locations other than a city described in subsection (b)(1).

(e) Money transferred to a city fiscal officer under subsection

(b)(1), (c)(1), or (d)(1) shall be credited to a special account to be known as the city economic development account. Money credited to the account shall be used only for those purposes described in IC 6-3.5-7 (the county economic development income tax).

*As added by P.L.51-1992, SEC.2. Amended by P.L.1-1997, SEC.38; P.L.170-2002, SEC.50.*

### **IC 6-9-26-13**

#### **Disbursements; resolution and findings; restrictions on use**

Sec. 13. (a) Before disbursing money from the fund established under section 11 of this chapter for an economic development project under section 12.5(b)(2)(A), 12.5(c)(3), or 12.5(d)(2) of this chapter, the county fiscal body must adopt a resolution that contains the following:

(1) A written finding that the project will do all of the following:

(A) Attract new business enterprises to the county or retain or expand existing business enterprises in the county.

(B) Benefit the public health and welfare and be of public utility and benefit.

(C) Protect and increase state and local tax bases or revenues.

(D) Result in a substantial increase in temporary and permanent employment opportunities and private sector investment within the county.

(2) The amounts to be disbursed from the fund for each economic development project.

(3) The date of the disbursement.

(b) The county fiscal body may impose restrictions on the use of the funds as a condition of the disbursement by including the restrictions in the resolution adopted under subsection (a).

*As added by P.L.74-1988, SEC.2. Amended by P.L.51-1992, SEC.3.*

### **IC 6-9-26-14**

#### **Repeal of ordinance**

Sec. 14. If no obligations are outstanding, the county fiscal body may repeal the ordinance adopted under section 3 of this chapter imposing the tax before December 1 in any year.

*As added by P.L.74-1988, SEC.2.*

### **IC 6-9-26-15**

#### **Pledge of funds to finance obligations**

Sec. 15. (a) The county may enter into an agreement under which amounts deposited in, or to be deposited in, the fund are pledged to payment of obligations issued to finance the uses for the money authorized under section 12 or 12.5 of this chapter.

(b) With respect to obligations for which a pledge has been made under subsection (a), the general assembly covenants with the holders of these obligations that:

(1) this chapter will not be repealed or amended in any manner

that will adversely affect the imposition or collection of the tax imposed under this chapter; and

(2) this chapter will not be amended in any manner that will change the purpose for which revenues from the tax imposed under this chapter may be used;

as long as the payment of any of those obligations is outstanding.

*As added by P.L. 74-1988, SEC.2. Amended by P.L. 51-1992, SEC.4.*

#### **IC 6-9-26-16**

##### **Repeal of ordinance; effective date; copy**

Sec. 16. The repeal of an ordinance under section 14 of this chapter takes effect January 1 immediately following the date the repeal was adopted. If the fiscal body repeals the ordinance, the clerk shall immediately send a certified copy of the ordinance repealing the ordinance imposing the tax to the commissioner of the department of state revenue.

*As added by P.L. 74-1988, SEC.2.*